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NCAI INVOLVEMENT IN INTERGOVERNMENTAL TRIBAL-STATE RELATIONS

1978

The past year has been an interesting one in the development of relations between various State Governmental entities and tribal governments. The National Congress of American Indians, in conjunction with Mr. Sam Deloria and the American Indian Law Center, have played a lead role in the formulation of mechanisms to increase communications, establish task forces and even form a Commission in Tribal-State Relations, (which has an even number of Indian and State Commissions, with the National Conference of State Legislatures (NCSL). NCAI, at it's annual Executive Council meeting this past January, went on official record as supporting the NCSL/NCAI commission. The Commission, which will be funded by the Ford Foundation, with help from the Donner Foundation, has had a couple of preliminary meetings and will go full scale once the money arrives. A copy of the proposal, including the names of the Commissioners, was sent out to all NCAI member tribes earlier this year.

NCAI has also been in constant contact with The National Association of Counties (NACo), who had established an Indian Affairs Committee. This committee met in Seattle on May 12 and under the leadership of great advocates like Tom Tobin, Slade Gordon, and F. W. Rockwell (of ICERR), adopted a position endorsing the Oliphant case and calling for Indian water to be quantified at its present usage (among other backlash type suggestions). References were then made to Mel Tonasket as an "exclusionist" and to Joe DeLaCruz as "crafty", (personality descriptions which have always endeared them to Indian Country).

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At the Seattle meeting, which was void of any Indian County Commissioners, Mr. Jim Cain, County Commission from Greene County, Ohio, would not go along with those positions, (above), and issued a minority report, more progressive in nature.

This minority report was then taken to the NACo Annual Convention July 11, 1978 in Atlanta, Georgia and with the help of County Commissioner Louise Deschenny, (Navajo), Mr. Cain was successful in persuading the NACo General Assembly to adopt the more reasonable minority report. At this same meeting Mrs. Deschenny was selected to the Executive Committee of NACo.

These two events are a hopeful indication that NACo will not allow organizations like ICERR and personalities like Tom Tobin to dominate their future Indian positions. NACo has since asked NCAI if they will join in something similar to the NCSL Tribal-State Commision. A copy of the NACo position is attached.

Finally, NCAI has been in contact with - albeit limited - the National Governors Association (NGA). In a letter dated June 6, (enclosed) Utah Governor Scott Matheson, Chairman of the NGA Task Force on American Indian Policy, invited NCAI's participation in the Task Force. The Task Force has had one planning meeting in Denver where Governor Matheson issued the enclosed speech which we found suprisingly progressive. Mr. Pete Taylor, of the Senate Select Committee on Indian Affairs, attended this meeting and has reported that he was impressed with the open-mindedness of the Governor's designees.

Mr. Sam Deloria will be conducting a workshop on the issues involved in Tribal-State Relations here at the Convention.

CONTACT PEOPLE:

NCSL	Tassie Hanna (staff)	(202) 624-5416
NACo	Linda Bennett (staff)	(202) 785-9577
	Jim Cain (Greene County Commissioner, Ohio)	(513) 372-4461
NGA	Bill Cross (staff with Governor Milliken-Mich.)	(517) 353-9525
	Kent Briggs and Bruce Parry (staff with Governor Matheson, Utah)	(801) 533-5231
	Dave Johnson (staff, Washington, D. C.)	(202) 624-5300

NACo
National Association of Counties
Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone 202/785-9577

July 25, 1978

George Waters
National Congress of American Indians
1430 K Street, N.W.
Washington, D. C. 20005

Dear Mr. Waters:

Pursuant to your request, I am sending copies of the following items:

- American County Platform on Indian Affairs
- Resolution on Indian Affairs

These items were adopted by the National Association of Counties (NACo) at its annual conference in Atlanta, Georgia, on July 11, 1978.

The American County Platform and conference resolutions are NACo's principle policy vehicles. The platform is NACo's permanent policy document, reflecting the philosophy and broad objectives of NACo's membership. Resolutions, on the other hand, are generally single-purpose documents addressing specific issues or legislation. They are employed to draw attention to a topic of current concern, to clarify parts of the broadly worded platform, or to set policy in areas not covered by the platform.

Feel free to contact me at (202)785-9577 if you have any further questions or comments either on NACo's policy process or the recently adopted policy on Indian Affairs.

Sincerely,

Linda Bennett

Linda Bennett
Public Lands Specialist

LB/mrc

National Association of Counties
Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone 202/785-9577

AMERICAN COUNTY PLATFORM STATEMENT
ON INDIAN AFFAIRS

Problem Statement

Historically inconsistent Federal policies toward Indian reservations and recently expressed moves by Indian Tribes on the reservations toward complete self-government have created a local government crisis in many parts of the nation. By failing to spell out Tribal jurisdictions, Congress has allowed a situation of conflict to develop in which Tribal aspirations and treaty interpretations are pitted against other constitutional principles and rights.

The result of this is a further deterioration of relations between Indians and non-Indians. Without judging the validity of Indian claims, it is clear that Congress must decide matters of jurisdictions - civil, criminal, control of resources, etc. - on a broad spectrum.

The National Association of Counties, therefore, calls upon Congress to resolve this situation by clearly defining the nature and scope of Tribal jurisdictions, rights and sovereignty; their relation to the various States and, through the States, to the local governments.

Policy Statement

The National Association of Counties:

- Recognizes the unique citizenship status of Native Americans;
- Recognizes the important contirbutions Native American peoples and cultures have made to our national heritage;
- Supports the principles of Tribal self-government;

over

- Supports measures to preserve the cultural and social identity of Native American peoples; and

- Pledges cooperation with Indian Tribes for the provision of constituent services within our individual jurisdictions.

Tribal Jurisdictions

NACo calls upon Congress to enact comprehensive legislation which makes clear the governmental powers granted Tribes by Congress and/or Treaty, balancing the unique status of the Tribes with other Constitutional concerns.

In developing such enactments, Congress should be mindful of the following questions and considerations:

1. To what extent do Tribal governments have sovereign immunity from legal action? Is it that accorded to State or Local governments? Is it something more? Is it something less? A clear definition of both the government and its immunity is required.

2. Within "Indian Country", what jurisdiction would Tribal governments have over Tribal members? Over non-members? Over members outside of "Indian Country"?

3. Regarding hunting and fishing: Within the reservations, who would regulate members; who non-members? Who would have proprietory power over resources? Could the Tribes exclude non-members? Who would have the power, for conservation purposes only, to regulate both members and non-members? Outside of Indian reservations, what are the limits of Treaty provisions regarding hunting and fishing?

4. Who has jurisdiction on the reservation over natural resource development, including but not limited to the following: Water, timber, coal, oil shale, grazing lands?

5. Regarding criminal jurisdiction in "Indian Country": What levels of responsibility for enforcement, prosecution and trial rest with the Tribes? With the States? With the Federal Government?

6. What is the extent of Tribal water rights?

7. If Congress supports the continued conversion of land to Indian Trust status under the Indian Reorganization Act of 1934, then Congress should develop satisfactory methods to compensate local governments for the loss of already lean local tax monies necessary to the provision of mandated and requested services.

8. Where, in redressing long-standing Indian rights violations, Congress finds it appropriate to limit equally long-standing practices or assumed rights of non-Tribal members, especially where such change works a fiscal hardship, Congress should make provision for appropriate redress to those so limited.

Adopted by the NACo Board -- July, 1978

RESOLUTION ON INDIAN AFFAIRS

Whereas NACo is concerned that proposals to Congress for Indian self-government made by the American Indian Policy Review Commission state that:

> "The growth and development of tribal government into fully functioning governments necessarily encompasses the exercise of some tribal jurisdiction over non-Indian people and property within reservation boundaries."

Whereas Conflict and changes in, Federal Indian affairs and policies have resulted in a substantial number of non-tribal members living or owning land on Indian reservations and since there exists in most of the same areas, county governments, the proposed Commission policy raises issues concerning voting by and representation of non-members, reservation boundaries, due process of law, land use planning and zoning, distribution of water rights, environmental quality standards, and questions of equal taxation.

Therefore, let it be resolved that

NACo proposes that before Congressional or Federal Agency implementation of the recommendation of the American Indian Policy Review Commission, Congress must:

1. Adequately study the socio-economic impact on non-members of Indian tribes living and owning property on or near Indian Reservations, now represented by county government,

2. Consider development of an intergovernmental model representing Federal, state, county, and Indian Tribal governments that address the above issues, and

3. After hearings and debate, adopt a Congressional policy statement determinative of the issue of whether Congress perceives the various tribes of American Indians as:

   a. Bodies politic in the nature of a sovereign as that word is used to describe the United States and the States; or as

   b. Bodies politic which the United States, through its sovereign power, permits to govern itself and order its internal affairs, but not the affairs of others.

ADOPTED BY NACo, JULY 1978

SCOTT M. MATHESON
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

June 6, 1978

Mr. Chuck Trimble
National Congress of American Indians
Seventh Floor
1430 K Street, NW
Washington, D.C. 20005

Dear Mr. Trimble:

As Chairman of the recently established National Governors' Association Task Force on American Indian Policy, I am writing to invite you or a designated member of your organization to serve in an advisory capacity to the task force.

The mandate of the task force, as the enclosed letter from NGA Chairman William Milliken indicates, is to produce a "report for NGA review which would identify and analyze the major issues facing the states and make recommendations which could assist governors in participating effectively in the national debate on American Indian Policy." Obviously, it is imperative that the task force have the advice and counsel of organizations with a proven record of expertise and concern on matters of Indian policy.

By consenting to serve in this capacity, you would be providing an invaluable service by being available for periodic consultation on the broad policy issues with which the task force will have to cope. I am enclosing an organization chart of the task force and work schedule and hope that you would be willing to assist in this important effort.

Sincerely,

Governor

SMM: kb
Enclosure

NATIONAL CONGRESS OF AMERICAN INDIANS

SUITE 700, 1430 K STREET, N.W., WASHINGTON, D.C. 20005 (202) 347-9620

June 21, 1978

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Cupeno-Luiseno

EASTERN AREA
Jonathan Ed Taylor
Cherokee

Governor Scott Matheson
Office of the Governor
Salt Lake City, Utah 84114

Dear Governor Matheson:

I am in receipt of your letter inviting the National Congress of American Indians to participate in the Governor's Association Task Force on American Indian Policy. The N.C.I.A. would be honored to serve on this task force. As you may know, the National Congress of American Indians is the oldest, largest and most representative Indian organization in the country and we appreciate your recognizing that fact by way of this invitation.

A specific designee and alternate to the task force will be chosen at our Annual Midyear Conference which will be in Spokane, Washington, June 26 through 28. I suggest you send a member of your staff to attend this conference. We shall be getting in touch with you shortly after the conference and the decisions have been made.

In looking at the Organization Chart and Work Plan, I'm not sure what our position and strength will be as an Advisory Panel. Are we acting as consultants or is our involvement more permanent? Will decisions on positions taken be made exclusively by the Governors Designees or will the Advisory Panel have voting strength and/or minority status?

Your attention to these concerns will be greatly appreciated.

Sincerely,

Albert W. Trimble
Administrator, N.C.A.I.

National Governors' Association

William G. Milliken
Governor of Michigan
Chairman

Stephen B. Farber
Director

April 5, 1978

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GOVERNOR'S OFFICE
STATE OF UTAH

Honorable Scott M. Matheson
Governor of Utah
State Capitol
Salt Lake City, Utah 84114

Dear Scott:

In response to the strong interest which you and other Governors have expressed, I believe that the National Governors' Association should establish a NGA Task Force on American Indian Policy. I would like to invite you to serve as the Task Force Chairman.

This Task Force, which will operate directly under the Executive Committee, is charged with developing a report for NGA review which would identify and analyze major issues facing the states and make recommendations which could assist the Governors in participating effectively in the national debate on American Indian policy. It is anticipated that the Task Force would be dissolved after its report has been presented to the Association for review.

I would suggest that the Task Force focus specifically on the following policy areas:

1. The relationship of tribal governments to governments within the structure of the state.

2. Mechanisms that would formalize relations between tribal governments and other governments within state structures.

3. Indian treaty rights and claims on land, water, and other natural resources.

4. Jurisdictional issues, including criminal and civil jurisdiction, tribal jurisdiction over non-Indians, and tax issues.

5. The roles of state and federal governments in delivery of services to both reservation and non-reservation Indians, including social services, welfare assistance, social security benefits, and education.

6. Determination of a common ground for cooperative state-Indian planning and management in the following areas: air and water quality, mineral development, economic development, and law enforcement.

7. Development of NGA positions on legislative initiatives presented by the American Indian Policy Review Commission.

Task Force members will be selected on the basis of Governors' interest in these issue areas and should reflect the broadest possible range of views and concerns.

I am designating Glenn Friedly of my office to act as my personal representative to the staff advisory council of the Task Force. David Johnson will provide staff coordination on behalf of the National Governors' Association. I am also making available to the Task Force additional staff to conduct the research, analysis, and draft report preparation elements of the work program under your general direction.

I am confident that under your able leadership the Task Force will make significant contributions to the development of improved American Indian policies at all levels of government.

Warm personal regards.

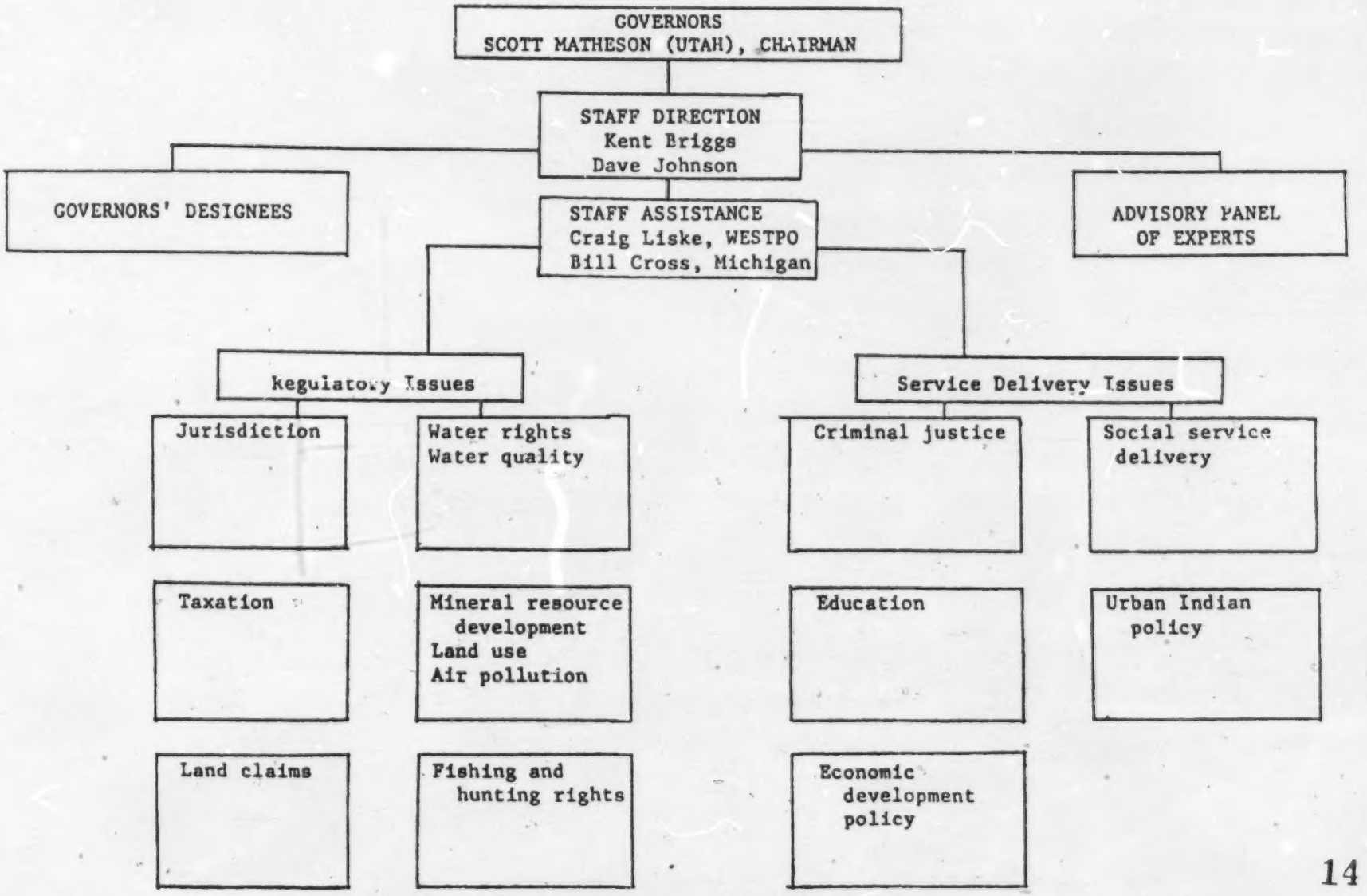
Sincerely,

Chairman

cc: Glenn Friedly
David Johnson

NGA TASK FORCE ON AMERICAN INDIAN POLICY

PROPOSED ORGANIZATION CHART AND WORK PLAN



BRIEFING PAPER ON NGA TASK FORCE ON AMERICAN INDIAN POLICY*

Since the earliest day of our nation, the responsibility for Indian relations has been the domain of the federal government, to the exclusion of its counterparts on the state and local levels. Unfortunately, as the membership of Congress and the federal judiciary changed, so did the policies they adopted to deal with the American Indian. For example, the federal policy from 1830 to 1880 was to isolate Indians on reservations away from the mainstream of American life and culture. In the late 1880's the federal government reversed iteself, and advocated instead that tribal governments be eliminated and Indian reservations be dissolved. In the 1930's, the policy changed to one of strengthening tribal governments and consolidating Indian lands once again. In the 1950's the policy was to terminate Indian tribes from federal supervision; a policy which would have eliminated tribal governments and given reservation land to individuals. Understandably, this history of conflicting federal policy with regard to Indian Americans has generated little more than difficulty and confusion for both the Indian tribes and the states. Even today, members of Congress have vastly different views on what federal policy with regard to the American Indian ought to be and bills are currently pending in Congressional committee which involve broad and extreme alternatives: for example, Representative Cunningham has introduced H.R. 9054, the Native Americans Equal Opportunity Act (a not very opaque euphemism for the destruction of any special consideration for Indians) which directs the President to abrogate all treaties made

*Given by Governor Scott Matheson at NGA Task Force Meeting July 7, 1978 - Salt Lake City, Utah

heretofore between the United States Government and the Indian Tribes, mandates that all tribal land be conveyed to individual tribal members and that all tribal funds be similarly dispersed and requires that all hunting and fishing rights derived by any Indian tribe from a treaty be abrogated; while in the Senate, S. 2502, the Tribal-State Compact Act, would authorize states and Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian county at the expense of the federal government.

In the midst of this confusion of past and present federal policies, Congress took a definite step in 1975 when it authorized the establishment of the American Indian Policy Review Commission which for 2 long years exhaustively and intesively investigated the entire field of federal-Indian relations. In May of -977, they submitted their final report to Congress and advocated a policy for the future.

It is against this backdrop of federal activity that the task force meets and attempts to more clearly understand their relationship to each otherand together to build workable solutions to the very pressing problems which they share. In determining future policies and in finding solutions, the states and the tribal governments need not and indeed, should not, be adversarial. They should, wherever possible, sit down together and with mutual respect for their individual sovereignties, work out agreements which benefit each side. Indeed, such agreements should be sought before resorting to either the courts or the Congress. There are 287 tribal governments and 80,000 state, county, and municipal governments, each with its own environment, concerns and circumstances. Agreements reached through negotiation and compromise between them would be far superior to any solutions which can be offered through federal

litigation or national legislation, both of which would offer only sweeping mandates unable to provide for the specific problems that individual localities face.

In their work, the Task Force should focus on the following 7 issues:

(1) The Task Force needs to define THE RELATIONSHIP OF TRIBAL GOVERNMENTS TO OTHER GOVERNMENTS -- FEDERAL, STATE, COUNTY AND MUNICIPAL. Are the states free to contract with tribal governments as they do with other units of local governments? Do they have the right to enter joint ventures for the use of land or resources or the delivery of services? Who, if anyone, has the obligation to provide services to Indians either on or off the reservation? Some states already assume this responsibility, while others provide no services, maintaining that it is the sole responsibility of the federal government. The relationship between tribal governments and state, local and the federal governments desperately needs to be clarified and understood.

(2) The task force needs to identify or establish MECHANISMS THAT WOULD FORMALIZE COMMUNICATION BETWEEN TRIBAL GOVERNMENTS AND STATE, COUNTY AND MUNICIPAL GOVERNMENTS. In Utah, the Division of Indian Affairs has been designated officially as the conduit for Indian concerns and the spokesman for their sentiments. But other states have no such structure.

(3) Much attention needs to be spent on INDIAN RIGHTS DERIVED EITHER FROM TREATY OR STATUTE AND THEIR CLAIMS ON LAND, WATER, AND OTHER NATURAL RESOURCES. Indian lands encompass approximately 50 million acres located on over 200 reservations in 26 states. A General Accounting

Office report on Indian natural resources estimated that Indian lands include: 5.3 million acres of commercial forest land, including 38 billion board feet of timber; 44 million acres of rangeland; and 2.5 million acres of cropland. Deposits of oil and gas, coal, uranium and phosphate are found on some 40 reservations in 17 states. And yet, for the most part, Indian reservations remain underdeveloped and many Indian people live in poverty. Timberland and deposits of oil, gas and coal do not end at the boundaries of a reservation. States and tribal governments alike can benefit from workable agreements for the orderly development of our natural resources, with special attention to possible tax sharing agreements to make such development equitable.

(4) JURISDICTIONAL ISSUES, including civil jurisdiction over non-Indians within the reservations and over Indians outside the reservation. Disputes over criminal jurisdiction was largely ended by the Supreme Court decision handed down on March 6 of this year in Oliphant v. Suquomish Tribe (a Washington state case) which held that Indians have no criminal jurisdiction over non-Indians on their tribal lands.

(5) The roles of state and federal governments in DELIVERY OF SERVICES TO BOTH RESERVATION AND NON-RESERVATION INDIANS, including social services, welfare assistance, social security benefits and education. For the most part, Indians are still poor, uneducated and unhealthy. The American Indian ranks at the bottom of virtually every social statistical indicator: he has the highest infant mortality rate, the lowest longevity rate, the lowest level of educational attainment, the lowest per capita income and the poorest housing and transportation in the United States.

States and tribes need to determine whose responsibility and whose obligation the delivery of social, welfare and health services is. Some states provide it already, while others, maintaining that it is purely

a federal responsibility, refuse to do anything. Other states, feeling they cannot provide such services for Indians without providing it for non-Indian citizens, do nothing for either group. The states are in a unique position to deliver such services economically and more effectively than the federal government. The Task Force should investigate whether these services can be provided through existing state mechanisms but with greater or even total federal fiscal support.

(6) COOPERATIVE STATE-INDIAN PLANNING AND MANAGEMENT in the following areas: mineral development, wildlife resources, economic development, law enforcement, air and water quality, and energy development. Utah has a good record of working with its Indians on water development, but the record in mineral development and coal extraction is not as impressive. Other states have done better; most worse than Utah. There can be much mutual benefit derived economically from planning together for the exploitation of oil shale and coal reserves, to mention only 2 examples.

(7) Finally, the Task Force needs to review those proposals included in the final report of the American Indian Policy Review Commission and respond to them, as well as the legislation now pending in Congress.